

Remarks of **Caroline Fredrickson**
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Future of American Media Caucus
Media Violence Briefing

Thank you for inviting me to speak before you today. Thank you especially to Congressman Hinchey, for asking me to speak to a topic central to the mission of the American Civil Liberties Union and near and dear to my heart and those of our hundreds of thousands of card-carrying members.

For 87 years, the ACLU has fought to preserve and protect free speech and the First Amendment. Oftentimes this has meant defending a cast of unsavory characters from anti-Semites to tasteless performers. And yet, we do it proudly and with the solid understanding that America is stronger when government stays out of the censorship business. The last thing this government or any government should do is try to control what American's do in the privacy of their own homes. Anyone who has ever watched television in a communist country can confirm that we are all better off when governments are not making programming decisions.

As you know, the FCC recently came out with a report on television violence. The Commission – the government's experts on television -- studied the television violence issue for years, and yet came away not being able to clearly articulate a solution. After years of study, the FCC cannot even define what violence is. And they cannot agree on what to do about it. And there is a good reason for that. Violence is hard to define.

The FCC cannot define it. The Supreme Court cannot define it. The government cannot regulate it – at least not without trampling on the First Amendment.

I say to Congressman Hinchey (and to any other Members of Congress present) that on behalf of the ACLU, we urge you to reject any proposals that would allow the Federal Communications Commission to regulate violence on television.

ACLU members strongly believe that the government should not replace parents as decision makers in America's living rooms. There are some things the government does well, but deciding what is aired and when on television is not one of them. Parents already have many tools to protect their children, including blocking programs and channels, changing the channel, or (my personal favorite) turning off the television.

The ACLU is not blind to the issue at hand. I can see why some parents are upset about what they see on television. I believe that a compelling case has been made for media literacy education. Congress may choose to play a role in educating parents on the dangers of over-exposure to media....but government focus should then be on providing those educational opportunities--not encouraging government to replace America's parents as the primary decision makers in their own homes. Government should not parent the parents.

Our concern is that imposing standards for television violence would be unconstitutional and damage important values that define America: the right to a free and open media, the right to free speech and the right of parents to control the upbringing of their children.

Parents play a central role in the lives of their children, and parents today have unprecedented capability to control what comes into their homes and what media their children consume.

As I mentioned and most of you probably know, the most basic and user-friendly tool every parent has against unwanted media content is the ability to turn the television off, or to establish rules about where and when children may watch TV. Recent technology in digital boxes permits blocking by rating, channel, title, and even, in some systems, program description. Cable subscribers who do not have set-top boxes can simply ask their cable companies to block specific channels that they do not want in their homes. Additionally, a multitude of web sites rate television shows, permitting parents to choose one that suits their individual taste and use those ratings to determine what their children watch.

Both the Parents Television Council and Common Sense Media have easy to use sites – with green for go, red for stop.

The ACLU is not opposed to solutions that parents and industry come up with – what concerns us is when Uncle Sam gets involved. There is a long history of using the media as a scapegoat for society's problems. At one time or another, books, movies, opera, jazz, blues, rock 'n roll, heavy metal and rap music, comic books, and videogames have all been accused of causing antisocial or violent behavior among minors and adults.

Since not all portrayals of violence are bad, the government would have insurmountable difficulty defining what is "good" violence and "bad" violence.

Even those who research this issue use inconsistent definitions of violence. If the researchers cannot concur on an objective definition, then will any regulations provide truly objective results that please all parents?

Similar to concerns about the feasibility of defining violence, one court noted that the FCC's indecency test was "undefined, indiscernible, inconsistent, and consequently, unconstitutionally vague." Specifically, the court used the example of "Saving Private Ryan," in which repeated use of four letter words was not considered indecent, profane, or gratuitous. In comparison, a single use of those same words was considered "shocking and gratuitous" when used at the Golden Globes. The inconsistent standard in defining "indecency" created an impermissible "chilling effect on free speech." Likewise, adequately defining violence will present similar unconstitutional chilling effects.

It would be virtually impossible for the government to create a definition of violence that would allow "acceptable" violence and would restrict "unacceptable" violence. Any such definition likewise would be vague and inconsistent, and would chill speech by requiring broadcasters to "steer far wider of the unlawful zone" and would thus violate the First Amendment.

Courts have found that the First Amendment protects violent speech and violent depictions. Multiple Supreme Court decisions have determined that "speech that many citizens find shabby, offensive, or even ugly" historically has been vindicated by the First Amendment. The First Amendment makes it clear that the government should have no power to restrict expression because of its messages, its ideas, its subject matter, or its content. Moral and aesthetic judgments are for the *individual* to make, not the government, even with a mandate or approval of a majority.

Parents have the tools they need to protect their children. If the government steps in and regulates the content of television shows or relegates certain shows to a late-night or early morning hour, it steps over the line and becomes the Federal Babysitting Agency—replacing parents as the ultimate decision makers in their children's lives.

The FCC's findings on violence provide a disputable basis for a governmental interest in regulation. Recent court decisions clearly show that in light of the current technologies enabling parents to control content precisely and through a variety of mechanisms, the government will need to demonstrate a compelling basis before it can regulate media content.

In addition, the means of regulation will have to be extremely narrowly tailored. The most effective and most precise mechanisms are those already available to all parents. The power to control the upbringing of their children, including what they watch should remain in the most capable, effective, and constitutional hands possible: the parents'.